REMARKS/ARGUMENTS

Claims 27-73 are pending. By this Amendment, claims 27 and 28 are amended. Reconsideration in view of the above amendments and the following remarks is respectfully requested.

In the Office Action, the restriction is maintained for the reason that claims 29-56 do not require that the method be performed in automatic titration. This argument seems to relate to a restriction between claims 28 and 29. However, the argument does not relate to the restriction which is being maintained between claims 27 and 29. Therefore, rejoinder of claims 29-56 is respectfully requested.

In addition, it appears that claim 28 is included within the elected group, for which Applicants are thankful to the Examiner. Reconsideration and withdrawal of the restriction requirement in its totality are respectfully requested.

Claims 27, 28, 57-62, 64, 65, 66, 69, and 70-73 were rejected under 35 U.S.C. §112, first paragraph. This rejection is respectfully traversed.

In the Office Action it is stated that the Applicant has not provided support in the specification with respect to "said mask-fit test pressure being substantially similar in magnitude to normal pressures encountered during the prior treatment session." Applicants respectfully traverse this assertion. For example, the original specification at page 2 provides support for what Applicants recite in claims 27 and 28. In particular, page 2 states that the problem with known methods is that the test pressure will be independent of the pressures actually delivered during an automatically titrating mode. See page 2, lines 4 and 5. Further, the original specification states that "a good indication of mask fitting under normal conditions of use will not be obtained if the test pressure is significantly different to the pressures encountered in

normal use." See page 2, lines 13-15. The remaining paragraphs of page 2 go on to explain examples of how the prior art system used to determine the mask-fit test pressure will be inadequate for two different patients whose 95th percentile pressures were approximately 7cm H_2O and 20 cm H_2O, respectively. Moreover, the present specification indicates that a typical device comprises a controllable flow generator coupled to a nasal mask that provides a supply of breathable gas to a patient in the range of 4 to 30 cm H_2O positive pressure. See page 1, lines 12-14. The specification also indicates that it is an object of the invention to overcome or at least ameliorate the problems mentioned in the Background of the Invention. See page 3, lines 1 and 2.

Accordingly, Applicants respectfully submit that the amendments to claims 27 and 28 presented in Applicants' March 4, 2005 Amendment were properly supported in the original specification and therefore satisfy the written description requirement of 35 U.S.C. §112, first paragraph.

Nonetheless, Applicants have amended claims 27 and 28 to more closely parallel the language at page 2, lines 13-15. For example, claims 27 and 28 state that "the mask-fit test pressure not being significantly different than pressures encountered in normal use by the wearer during the treatment session." Applicants respectfully would like to point out that the normal use is measured by each particular wearer, but this normal use is typically between 4 and 30 cm H_2O positive pressure, as set forth on page 1, line 14.

Reconsideration and withdrawal of the rejection are respectfully requested.

Claims 27, 57-62, 64, 66, 69 and 72 were rejected under 35 U.S.C. §102(e) over Estes et al. This rejection is respectfully traversed.

Estes et al. does not teach or suggest that the mask-fit test pressure is not significantly different than pressures encountered in normal use of the wearer during the prior treatment session, as recited in claims 27 and 28.

Instead, Estes et al. teaches that the "leakage test pressure is a relatively high pressure and may, for instance, be the peak pressure output by the apparatus during the previous night or some other desired pressure. Similarly, the pre-therapy pressure is a relatively low pressure and may be the minimum pressure output by the apparatus during the previous night or some other pressure." Column 30, lines 24-30.

Applicants respectfully submit that the relatively high pressure, the peak pressure, the relatively low pressure, and the minimum pressure output by the apparatus may be significantly different than pressures encountered in normal use of the wearer during the prior treatment session. Therefore, these specified pressures do not meet the language of claim 27.

In addition, Applicants note that Estes et al. describes that "some other desired pressure", besides the peak pressure or the minimum pressure can be used. However, the relatively high pressure and the peak pressure are specifically described in relation to what the apparatus output during the previous night. By contrast, the phrase "some other desired pressure" is not described in relation to pressure output by the apparatus during the previous night. There is no teaching or suggestion to one of ordinary skill in the art as to how "some other pressure" is selected – is it a fixed pressure? – what is the desired result? Therefore, there is no suggestion that "some other desired pressure" as mentioned in Estes et al. is at all related to what the pressure of the apparatus delivered during the previous night.

Moreover, Estes et al. clearly teaches that the mask-fit test pressure can be related to either the peak pressure or the minimum pressure output by the apparatus during the previous

night. As such, Estes et al. also does not teach that the mask-fit pressure is greater than a minimum pressure and less than a maximum pressure encountered during the prior treatment session, as recited in claim 27. As described in the present specification (page 9, lines 14-15), the "test pressure can be in the range of the 75th to 95th percentile pressure."

Dependent claims 57-62, 64, 66, 69 and 72 are patentable by virtue of their dependency on claim 27, and for the additional features they recite.

Reconsideration and withdrawal of the rejection are respectfully requested.

Claims 59, 65 and 73 were rejected under 35 U.S.C. §103(a) over Estes et al. This rejection is respectfully traversed.

At the outset, Applicants request clarification as to whether claim 73 is rejected since paragraph 21 of the Office Action does not specifically address claim 73.

Moreover, all of claims 59, 65 and 73 are patentable by virtue of their dependency on claim 27, and in addition to the further features they recite.

Reconsideration and withdrawal of the rejection are respectfully requested.

Applicants appreciate the indication that claims 63, 67 and 68 are allowed over the prior art of record. In addition, as claim 28 was only rejected based on 35 U.S.C. §112, it is believed that the prior as well as the present version of claim 28 satisfies the written description requirement, Applicants also request an indication as to the allowability of claim 28.

In view of the above amendments and remarks, Applicants respectfully submit that all the claims are patentable and that the entire application is in condition for allowance.

Should the Examiner believe that anything further is desirable to place the application in better condition for allowance, he is invited to contact the undersigned at the telephone number listed below.

Respectfully submitted,

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